

INITIAL STATEMENT OF REASONS

SECTION 2271. "FEE SCHEDULE FOR EXOTIC SPECIES CONTROL FUND"

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of the amended regulation is to establish a key element, the amount of the Fee, needed to implement funding for the programs to curtail the release of ballast water containing nonindigenous species. Both programs and the funding mechanism are already mandated by Division 36 of the Public Resources Code (P.R.C.). Only the specific amount of the Fee is not. The purpose for reducing the Fee at this time is to ensure that the State does not collect more funds than are needed for programs established under this Law.

NECESSITY

The proposed amendment to the regulation is necessary because, while the provisions of Section 71215 of the P.R.C. require the State Lands Commission (the Commission) to collect the fee in question, if the amount of that fee is not reduced, the State will collect funds it cannot spend under existing law. In 1999, the Governor and the Legislature recognized the urgent need to curtail introductions of nonindigenous species from ships' ballast water and sediment discharges into State waters. They therefore established a new division in the P.R.C. comprised of Sections 71200 through 71217 and entitled, "Division 36. Ballast Water Management for Control of Nonindigenous Species". Among these provisions is P.R.C. Section 71215(b)(1), which requires the Commission to establish a reasonable and appropriate fee (the Fee) to carry out this Law. However, by its own terms, this Law expires on January 1, 2004. Programs and budgets have essentially been established for implementation through that expiration date. If the proposed amendment is not adopted, then the State will likely collect more than is needed for those required programs. Reducing the Fee to \$200 will ensure the necessary funds are available without resulting in an unreasonable surplus.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

None

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS

The Commission Staff has determined that there are no alternatives considered which would be more effective in carrying out the purposes of the proposed regulation or would be as effective and less burdensome to affected private persons.

To help prevent further introductions of nonindigenous species through ballast water releases, Division 36 of the P.R.C. established a mandatory, multi-agency ballast water management and control program. Responsible agencies include the Commission, Department of Fish and Game (DFG), State Water Resources Control Board (SWRCB), and the Board of Equalization (BOE). Each agency is required to work in cooperation with the others in developing reports and conducting research into the extent of current invasions and potential long-term solutions to the problem of nonindigenous species introductions.

The programs required under this Law are numerous. Central is the requirement that ships traveling into the State exchange their ballast water prior to entering State waters and the Commission is charged with implementing an extensive monitoring program to ensure these exchanges are performed. An enforcement program has also been established, which includes imposition of administrative penalties. The Commission is also required to synthesize and analyze monitoring and inspection information to evaluate the effectiveness of the ballast water management program. The results of the evaluation are due to be reported to the Legislature by September 1, 2002.

The DFG, in consultation with the Commission and the SWRCB, is conducting research to determine the location and extent of nonindigenous aquatic species populations already present in coastal and estuarine waters of the State. This study of baseline conditions is due to the Legislature by December 31, 2002, so that the Legislature may consider what course of action to take before the "sunset" date of this Law on January 1, 2004.

The SWRCB, in consultation with the Commission and the DFG, is required to conduct a study to evaluate alternatives for treating and otherwise managing ballast water to prevent the introduction and spread of nonindigenous species into the waters of the State. This study will determine (a) the best available technologies that will provide the greatest reduction in the number of introduced species; (b) the relative effectiveness of those technologies; and (c) the cost of implementing those technologies. The study shall provide recommendations of the best of those technologies, and is due to the Legislature by December 31, 2002.

Finally, the BOE is required by this law to collect the required fees for the Fund, and the cost of collection must also be covered by the Fund.

The Fee was established initially at \$600 per voyage by emergency regulation that became effective on January 1, 2000. The Fee was reduced to \$400 per voyage, effective April 30, 2000 by emergency regulation. Those emergency regulations were replaced on August 29, 2000 with permanent regulations (2 CCR 2271) setting the fee at \$400 per voyage. Quarterly review of the Fund status by the BOE and the Commission staff predicts that, even under conservative assumptions, a continued Fee set at \$400 is unnecessarily high.

The Commission has determined that it is necessary to set the Fee at \$200 for each voyage. This conclusion was reached after the Commission considered all alternatives permitted under the law, from no fee at all up to the maximum level of \$1000 per qualifying voyage. A variety of tiered Fees were also considered, including a cap on the number of voyages any individual shipping company would be charged, a lower Fee specifically for the Hawaiian trade and a lower Fee for operators that make certain commitments. Taking into account past results from collection efforts, a flat Fee set at \$200 per qualifying voyage is expected to produce revenues sufficient to cover in a timely manner all remaining costs for all elements of the programs mandated under this Law without producing a significant surplus.

The Commission's original analysis was based upon a number of assumptions, the primary one being that the financial needs for the program would be in accordance with the Budget Change Proposals that have been submitted to date. These call for expenditures of \$615,000 in Fiscal Year (FY) 1999/2000, \$1,930,000 in FY 2000/2001, \$2,005,00 in FY 2001/2002, \$2,098,00 in FY 2002/2003 and \$972,500 in FY 2003/2004, at the end of which the program will expire. The other two assumptions were that the State would see about 6000 voyages each year against which the Fee could be levied and that the State would likely see a compliance rate of approximately 75%. These figures were based upon the experience of the shipping community and the Board of Equalization. Calculations were therefore based upon 4500 qualifying voyages per year. With these assumptions, the BOE, the Commission and the Technical Advisory Group (TAG), consisting of representatives from the maritime industry, state agencies, and environmental organization, concluded that the Fee could be set at \$400 per voyage.

During an annual review of the Fund status by the BOE and the Commission staff in February 2002, the assumptions used to set the Fee at \$400 per voyage were determined to be incorrect. Currently, the State is seeing a compliance rate of approximately 98% and the number of qualifying voyages per year is approximately 5700 per year. Based on the current Fee amount of \$400 per voyage and the revised assumptions, projections produce revenues that far exceed the costs of the programs mandated under this Law. Projections estimate a surplus of approximately \$1,898,000. Utilizing the revised assumptions, the Commission and the TAG concluded that the Fee could be set at \$200 per voyage to cover the remaining program costs through FY 2002/2003.

The amount of the fee under this Law may be modified in the future. If the Commission finds that collection rates are higher or lower than anticipated, the Commission will have to consider again the appropriate amount of the fee. If that action is necessary, the modification will be made as an amendment to these regulations.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.

The Commission finds that the adoption of this amended regulation will not have a significant adverse economic impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

All affected businesses are commercial maritime transportation vessel owners and operators, having annual gross receipts of more than \$1,500,000, as specified under Gov. C. Section 11342.610(c)(7). This change will actually reduce the cost to businesses conducting operations in California.

SECTION 2271. "Fee Schedule for Exotic Species Control Fund"

- (a) The fee required under Public Resources Code Section 71215 is ~~four hundred dollars (\$400)~~ two hundred dollars (\$200) per vessel voyage.

This provision sets the fee payable to fund the Exotic Species Control Fund at two hundred dollars (\$200) per vessel voyage. This is less than the maximum amount authorized by P.R.C. Section 71215(b)(1).

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